

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No.99-64
Table of Allotments,) RM-9485
FM Broadcast Stations,)
(Genoa, Mt. Morris, and)
Oregon, Illinois))

NOTICE OF PROPOSED RULE MAKING

Adopted: February 3, 1999

Released: February 12, 1999

Comment Date: April 5, 1999

Reply Date: April 20, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Farm Belt Radio, Inc. ("petitioner"), permittee of unbuilt FM Stations WOXM, Channel 291A ("WOXM"), Oregon, Illinois¹ and WSEY, Channel 239A, ("WSEY"), Mt. Morris, Illinois². Petitioner seeks two simultaneous amendments to the FM Table of Allotments.³ First, petitioner proposes to change WOXM's community of license to Genoa, Illinois on Channel 292A, and the modification of its construction permit accordingly. Second, petitioner proposes to change WSEY's community of license to Oregon, Illinois, with no change of channel, and the modification of WSEY's construction permit accordingly.

2. Petitioner's proposal is filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Petitioner states that the requested reallocations of Channel 292A to Genoa and Channel 239A to Oregon are mutually exclusive with their existing authorizations at Oregon and Mt. Morris and that no relocation of

¹See, BPH-930604MD

²See, BPH-960830JD

³Farm Belt's pleading was a petition for reconsideration of the Commission's dismissal of a prior rule making request. Inasmuch as we are treating it as a new petition for rule making, the petition for reconsideration will be dismissed as moot.

the transmitter site for Station WSEY is proposed.⁴

3. Petitioner, also claims with respect to Genoa, that it is a community for allotment purposes. Petitioner states that Genoa is an incorporated community with its own local government consisting of a full-time city manager, as well as its own police, fire and water/sewer departments. Genoa has its own post office and zip code. It is home to its own public schools serving over 1200 students, six churches, scouting programs, a Lion's Club, and over 20 other clubs and civic organizations, recreational facilities, a Chamber of Commerce, a museum and a full complement of businesses and other services consistent with a community of its size.

4. Additionally, petitioner claims that adoption of its proposal will result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). In support of this position, petitioner asserts that the proposed substitutions will result in a first local service being moved from the smaller community of Mt. Morris (2,919 people) to the larger communities of Genoa (3,038 people) and Oregon (pop. 3,891). Although Channel 239A also represents the only aural service to Mt. Morris, petitioner remarks that as its Station WSEY is unbuilt at Mt. Morris, its reallocation request will not deprive the community of an "existing service".⁵ Rather, petitioner asserts, the communities of Mt. Morris and Oregon will continue to receive an adequate number of aural broadcast services, as both communities presently receive at least five full-time aural broadcast services.

5. We believe that the proposal warrants consideration. In seeking comment on this proposal, we recognize that the proposed reallocation of Station WQXM(FM) from Oregon to Genoa on Channel 292A would result in the smaller community of Genoa (pop. 3,083) obtaining a first local service and the larger community of Oregon (pop. 3,891) not having a first local service. However, viewed as a whole, both change of community proposals appear to result in a preferential arrangement of allotments because, of the three communities involved, the two largest (Genoa and Oregon) would have first local transmission services and the smallest (Mt. Morris) would not. See, e.g., Blanchard, LA, 10 FCC Rcd 9828 (Comm. 1995) (in comparing mutually exclusive allotment proposals that would provide first local transmission services, the more populated community is favored).⁶ Further, although the proposal would technically remove

⁴The coordinates for Channel 292A at Genoa are North Latitude 42-01-00 and West Longitude 88-49-00.

The coordinates for Channel 239A at Oregon are North Latitude 41-59-04 and West Longitude 89-29-52.

⁵Petitioner notes that the Commission recognized at paragraph 19 and footnote 16 of its Modification of FM and TV Authorizations to Specify New Community of License, 4 FCC Rcd 4870 (1989) recon. granted in part, 5 FCC Rcd 7094 (1990) that for purposes of changing a community of license the phrase "existing service" excludes bare construction permits. See also, Midway, Panacea and Quincy, Florida, 10 FCC Rcd 6112 (1995). Petitioner notes that there will only be theoretical areas and populations which will lose reception service, as well as areas and populations which will receive new service. No white or gray area will be created by the proposed modification of WSEY's facilities authorized in its construction permit and Mt. Morris will continue to receive service from a number of stations.

⁶As noted above, both Oregon and Mt. Morris currently receive at least five full-time reception services and are thus considered to be well served. We request that petitioner provide a showing as to the number of reception services at Genoa.

the only allotment from Mt. Morris, Station WSEY remains unbuilt. Therefore, we do not consider its removal from Mt. Morris to present the parallel concerns with loss of service represented by the removal of an operating station, as it does not constitute a service the public has become reliant upon. See Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (1995); Pawley's Island and Atlantic Beach, South Carolina, 8 FCC Rcd 8657 (1993), and Glencoe and LeSueur, Minnesota, 7 FCC Rcd 7651 (1992).

6. In view of the above we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

<u>Community</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Genoa, Illinois	-----	292A
Mt. Morris, Illinois	239A	-----
Oregon, Illinois	291A	239A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before April 5, 1999, and reply comments on or before April 20, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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Miller & Miller, P.C.
P.O. Box 33003
Washington, D.C. 20033

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding contact Arthur D. Scrutchins, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically

requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau